

Attorney(s): JACQUELINE C. HERRITT, ESQUIRE  
Address: 89 HADDON AVENUE NORTH  
HADDONFIELD, NJ 08033

Telephone No.: 856-429-8334

Attorney(s) for Plaintiff(s):

**James & Stacey Dean**

vs.

**Plaintiff(s)**

**Boat-N-RV Warehouse, et al**

**Defendant(s)**

**SUPERIOR COURT OF NEW JERSEY  
DIVISION  
ESSEX COUNTY**

**DOCKET NO. L-7354-03  
CIVIL ACTION**

**Summons**

From the State of New Jersey  
To the Defendant(s) named above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, CN-971, Trenton, NJ 08625. A filing fee\* payable to the Clerk of the Superior Court and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

Dated: December 19, 2003

**Donald Phelan**  
Superior Court Clerk

Name of Defendant to be Served: Boat-N-RV Warehouse

Address of the Defendant to be Served: 12834 Rte. 9W, West Coxsackie, NY 12192

\* \$135.00 FOR CHANCERY DIVISION CASES OR \$135.00 FOR LAW DIVISION CASES

**KIMMEL & SILVERMAN**

By: Jacqueline C. Herritt, Esquire  
Vivian B. Peikin, Esquire  
89 Haddon Avenue North  
Haddonfield, New Jersey 08033  
(609) 429-8334

Attorneys for Plaintiff

JAMES AND STACEY DEAN  
99 Liberty Street  
Bloomfield, NJ 07003

SUPERIOR COURT OF NEW JERSEY  
ESSEX COUNTY - LAW DIVISION

v.

CIVIL ACTION

WORKHORSE CUSTOM CHASSIS  
600 Central Avenue, Suite 220  
Highland Park, IL 60035

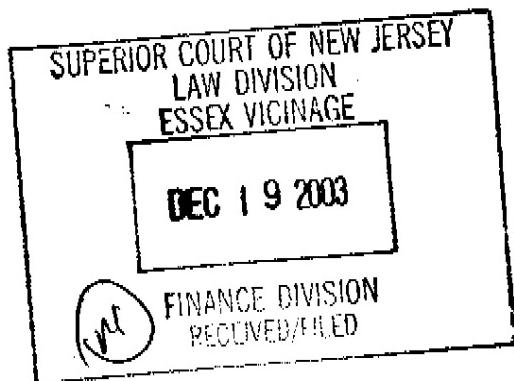
NO: L-7354-03

and

R-VISION  
2666 S. Country Club Road  
Warsaw, IN 46580

and

BOAT-N-RV WAREHOUSE  
12834 Rte. 9W  
West Coxsackie, NY



AMENDED COMPLAINT

1. Plaintiffs, James and Stacey Dean, are adult individual citizens and legal residents of the State of New Jersey, residing at 99 Liberty Street, Bloomfield, New Jersey 07003.

2. Defendant, Workhorse Custom Chassis, is a business corporation qualified to do business in the State of New Jersey, with its legal residence and principal place of business located at 600 Central Avenue, Suite 220, Highland Park, Illinois 60035, and can be served at same.

3. Defendant, R-Vision, is a business corporation qualified to do business in the State of New Jersey, with its legal residence and principal place of business located at 2666 S. Country Club Road, Warsaw, IN 46580, and can be served at same.

4. Defendant, Boat-N-RV Warehouse, is a business corporation qualified to do business in the State of New Jersey, with its legal residence and principal place of business located at 12834 Rte. 9W, West Coxsackie, NY 12192, and can be served at same.

#### BACKGROUND

5. On or about October 14, 2001, Plaintiffs purchased a 2002 Condor Motorhome by R-Vision, manufactured and warranted by Defendant, Workhorse Custom Chassis bearing the Vehicle Identification Number 5B4LP57G113333502. The vehicle was purchased in the State of New York and is registered in the State of New Jersey.

6. The price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges but, excluding other collateral charges not specified, totaled more than \$119,112.00. A true and correct copy of the Sale Contract is attached hereto, made a part hereof and marked Exhibit "A".

7. Plaintiff avers that as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle cannot be utilized for the purposes

intended by Plaintiff at the time of acquisition and as such, the vehicle is worthless.

8. In consideration for the purchase of the above vehicle, Defendant issued to Plaintiff several written warranties, including the balance of a three (3) year or thirty-six-thousand (36,000) mile bumper-to-bumper warranty, and a 72 month/75,000 mile extended warranty, as well as other standard warranties, as set forth in the warranty booklet. A true and correct copy of the Extended Service Plan Contract is not in Plaintiffs' possession, however, it is believed that Defendant may obtain from it's authorized dealer.

9. On or about October 14, 2001, Plaintiff took possession of the above-mentioned vehicle and experienced nonconformities which substantially impair the use, value and/or safety of the vehicle.

10. The nonconformities violate the express written warranties issued to Plaintiff by Defendant.

11. Plaintiff avers the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remains uncorrected.

12. In addition, the above vehicle has or will be out of service by reason of the nonconformities complained of for a cumulative total of twenty (20) days or more.

13. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the manufacturer on numerous occasions. After a reasonable number of attempts, the manufacturer was unable to repair the nonconformities.

14. During the warranty period, Plaintiff complained about defects and/or non-conformities to the following vehicle components on at least three (3) occasions: transmission, acceleration, engine management system, windshield wipers and powertrain. True and correct copies of repair invoices are attached hereto, made a part hereof and marked Exhibit "B."

15. The vehicle continues to exhibit defects and nonconformities which substantially impair its use, value and/or safety.

16. Plaintiff has been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton and negligent failure to comply with the provisions of its warranty.

17. Plaintiff has provided Defendant with a final repair opportunity prior to filing the within Complaint.

18. Plaintiff seeks relief for losses due to the nonconformities and defects in the above-mentioned vehicle in addition to reasonable attorney fees and all court costs.

**COUNT I AGAINST ALL DEFENDANTS**  
**MAGNUSON-MOSS FEDERAL TRADE COMMISSION IMPROVEMENT ACT**

17. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

18. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

19. Defendant is a "Warrantor" as defined by 15 U.S.C. §2301(5).

20. The purpose for which this product is normally used is personal, family and household use.

21. By the terms of the express written warranties referred to in this Complaint, Defendant agreed to perform effective warranty repairs at no charge for parts and/or labor.

22. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

23. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

24. Section 15 U.S.C. § 2310(d)(1) provides:  
If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

25. Plaintiff avers Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

26. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the contract price of the subject vehicle, plus all collateral charges and attorney fees.

**COUNT II AGAINST ALL DEFENDANTS**  
**UNIFORM COMMERCIAL CODE**

27. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

28. The defects and nonconformities existing within the vehicle constitute a breach of contractual and statutory obligations of Defendant, including but not limited to the following:

- a. Express Warranty;
- b. Implied Warranty Of Merchantability; and
- c. Implied Warranty Of Fitness For A Particular Purpose.

29. At the time of obtaining possession of the vehicle and at all times subsequent thereto, Plaintiff has justifiably relied upon Defendant's express warranties and implied warranties of fitness for a particular purpose and implied warranties of merchantability.

30. At the time of obtaining possession of the vehicle and at all times subsequent thereto, Defendant was aware Plaintiff was relying upon Defendant's express and implied warranties, obligations, and representations with regard to the subject vehicle.

31. Plaintiff has incurred damages as a direct and proximate result of the breach and failure of Defendant to honor its express and implied warranties.

32. Such damages include, but are not limited to, the contract price of the vehicle plus all collateral charges, including attorney fees and costs, as well as other expenses, the full extent of which are not yet known.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant, in an amount equal to the contract price of the subject vehicle, plus all collateral charges and attorney fees.

**COUNT III AGAINST ALL DEFENDANTS**  
**NEW JERSEY CONSUMER FRAUD ACT**

33. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

34. Plaintiff is a "Person" as defined by N.J.S.A. 56:8-1(d).

35. Defendant is a "Person" as defined by N.J.S.A. 56:8-1(d).

36. Defendant's actions surrounding the sale and servicing of the subject vehicle were unconscionable. Defendant's agents also acted with a reckless and callous disregard for Plaintiff's rights in negotiating and handling Plaintiff's warranty claims.

37. Defendant's actions surrounding the sale and servicing of said vehicle constitute a unconscionable commercial practice, deception, fraud, false pretense, false promise, and/or misrepresentation. Defendant and its agents acted affirmatively in such a manner as to be an unlawful commercial practice.

38. Defendant acted knowingly with the intent to cause plaintiff's reliance thereupon.

39. Defendant knowingly concealed, suppressed, or omitted facts material to the transactions at issue, in that Defendant was aware the defect(s)/condition(s) could not be repaired, and that the ineffectual repairs were performed by incompetent or unqualified individuals. Defendant's failure to verify the defect(s) or condition(s) constitutes a refusal to perform the repairs under its statutory or contractual obligations.

40. Plaintiff believes, and therefore, avers that the defect(s) or condition(s) outlined previously is/are an inherent design defect and that as such the Defendant must certify the existence of this defect or condition to the Division of Consumer Affairs. Defendant has failed to file this certification and this failure is a violation of the New Jersey Consumer Fraud Act N.J.S.A. 56:8-1 et seq.

41. Defendant's failure to supply an itemized legible statement of repair is an unlawful practice pursuant to the New Jersey Consumer Fraud Act N.J.S.A. 56:8-2.

42. The Act prohibits the aforementioned action of Defendant in the sale and attempted repair of the subject vehicle.

43. Plaintiff believes, and therefore, avers the reckless, wanton and willful failure of Defendant to comply with the terms of the written warranties constitutes an unfair method of competition.

44. As a result of Defendant's unlawful conduct, Plaintiff has and will continue to suffer ascertainable financial loss proximately caused by the Defendant's conduct. Said losses are outlined as follows:

- a. Plaintiff is entitled to a full refund N.J.S.A. 56:8-2.11-12;
- b. Plaintiff's vehicle given the defect/condition is worthless;
- c. Plaintiff lost time from work and other money as a result of having to take the vehicle in for the repeated repair attempts;
- d. Plaintiff has been relegated to finding alternative means of transportation while the vehicle was in for repairs and while the vehicle has been in its present condition. As a result, Plaintiff has incurred additional transportation costs; and
- e. Plaintiff has expended sums to maintain, store, insure, register,

and other expenses for transportation.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant for compensatory damages, treble damages, attorney fees, costs of suit, and any further relief as the Court may deem just and proper.

**COUNT IV AGAINST R-VISION AND BOAT-N-RV WAREHOUSE  
NJ MOTOR VEHICLE WARRANTY ACT**

45. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

46. Plaintiff is a "Consumer" as defined by N.J.S.A. 56:12-30.

47. Defendant is a "Manufacturer" as defined by N.J.S.A. 56:12-30.

48. Boat-N-RV Warehouse, is and/or was at the time of sale a "Dealer or Motor Vehicle Dealer" in the business of buying, selling, and/or exchanging vehicles as defined by N.J.S.A. 56:12-30.

49. On or about October 14, 2001, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities as defined by N.J.S.A. 56:12-29 et seq., which substantially impair the use, value and/or safety of the vehicle.

50. Defendant through its authorized dealer failed to provide written notification that the vehicle was covered by the New Jersey Motor Vehicle Warranty Act as provided in N.J.S.A.

56:12-34(c). Plaintiff believes and therefore avers said failure is a per se violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., as well as a violation of the New Jersey Motor Vehicle Warranty Act.

51. The nonconformities described violate the express written warranties issued to Plaintiff by Defendant.

52. Section 56:12-32 of the New Jersey Motor Vehicle Warranty Act provides:

- a. If, during the period specified in section 3 of this act, the manufacturer or its dealer is unable to repair or correct a nonconformity within a reasonable time, the manufacturer shall accept return of the motor vehicle from the consumer. The manufacturer shall provide the consumer with a full refund of the purchase price of the original motor vehicle including any stated credit or allowance for the consumer's used motor vehicle, the cost of any options or other modifications arranged, installed, or made by the manufacturer or its dealer within 30 days after the date of original delivery, and any other charges or fees including, but not limited to, sales tax, license and registration fees, finance charges, reimbursement for towing and reimbursement for actual expenses incurred by the consumer for the rental of a motor vehicle equivalent to the consumer's motor vehicle and limited to the period during which the consumer's motor vehicle was out of service due to a nonconformity, less a reasonable allowance for vehicle use.

53. Section 56:12-33 of the New Jersey Motor Vehicle Warranty Act provides a presumption of a reasonable number of repair attempts:

- a. It is presumed that a manufacturer or its dealer is unable to repair or correct a nonconformity within a reasonable time if, within the first 18,000 miles of operation or during the period of two years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date:
  - (1) Substantially the same nonconformity has been subject to repair three or more times by the manufacturer or its dealer and the nonconformity continues to exist; or
  - (2) The motor vehicle is out of service by reason of repair for one or more nonconformities for a cumulative total of 20 or more calendar days since the original delivery of the motor vehicle and a nonconformity continues to exist.
- b. The presumption contained in sub-section a. of this section shall apply against a manufacturer only if the manufacturer has received

written notification, by or on behalf of the consumer, by certified mail return receipt requested, of a potential claim pursuant to the provisions of this act and has had one opportunity to repair or correct the defect or condition within 10 calendar days following receipt of the notification. Notification by the consumer shall take place any time after the motor vehicle has had substantially the same nonconformity subject to repair two or more times or has been out of service by reason of repair for a cumulative total of 20 or more calendar days.

54. Plaintiff has satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

55. In addition, the above vehicle has or will be out of service by reason of the nonconformities complained of for a cumulative total of twenty (20) or more calendar days.

56. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

57. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

58. During the warranty period, Plaintiff complained about defects and/or non-conformities to the following vehicle components on at least three (3) occasions: transmission, acceleration, engine management system, windshield wipers and powertrain. True and correct copies of repair invoices are attached hereto, made a part hereof and marked Exhibit "B."

59. The vehicle continues to exhibit defects and nonconformities which substantially impair its use, value and/or safety.

60. Plaintiff has been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton, and negligent failure to comply with the provisions of N.J.S.A. 56:12-29 et seq.

61. Plaintiff has provided Defendant with a final repair opportunity prior to filing the within Complaint.

62. Pursuant to N.J.S.A. 56:12-29 et seq., Plaintiff seeks relief for losses due to the nonconformities and defects in the above-mentioned vehicle in addition to reasonable attorney fees and all court costs.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

KIMMEL & SILVERMAN

By:

Jacqueline C. Herritt, Esquire  
Vivian B. Peikin, Esquire  
Attorneys for Plaintiff  
89 Haddon Avenue North  
(856) 429-8334

JURY-DEMAND

Plaintiff hereby demands a trial by jury as to all issues.

KIMMEL & SILVERMAN

By: Jacqueline C. Herritt  
Jacqueline C. Herritt, Esquire  
Vivian B. Peikin, Esquire  
Attorneys for Plaintiff

CERTIFICATION PURSUANT TO R.4:15-1

Upon knowledge and belief I hereby certify that there are no other actions or arbitrations related to this suit pending or presently contemplated.

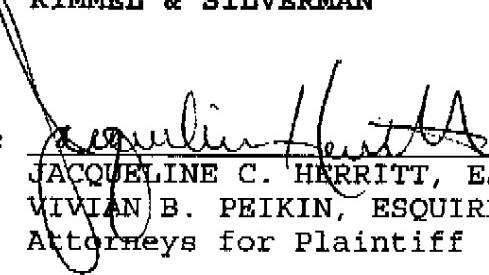
KIMMEL & SILVERMAN

BY: Jacqueline C. Herritt  
Jacqueline C. Herritt, Esquire  
Vivian B. Peikin, Esquire  
Attorneys for Plaintiff

CERTIFICATION OF NOTICE

Pursuant to N.J.S.A. 56:8-20 Plaintiff is mailing a copy of this Complaint to the Office of the Attorney General, Richard J. Hughes Justice Complex, 25 West Market Street in the City of Trenton, County of Mercer, in the State of New Jersey on , 2003.

KIMMEL & SILVERMAN

By:   
JACQUELINE C. HERRITT, ESQUIRE  
WIVIAN B. PEIKIN, ESQUIRE  
Attorneys for Plaintiff

SIMPLY FINANCIAL  
Dated 10/14/2003

Account #

ANNUAL PERCENTAGE RATE	CHARGE	AMOUNT FINANCED	DOWN PAYMENT	OPTION TO PURCHASE
The cost of your financing as a yearly rate.	12.99%	\$2,535.00	\$16,112.00	\$119,712.00
8.89	\$3,175.02	\$2,535.00	\$16,112.00	\$119,712.00

Your Payment Schedule will be:

No. of Payments	Amount of Payments	When Payments Are Due
240	\$83.66	Monthly beginning 11/14/2003

Security: You are giving a security interest in the Vehicle being purchased.

Late Charge: If a payment is more than 10 days late, you will be charged 15% of the

payment as a late charge.

Overpayment: If you pay off early, you will receive a prorated payoff.

Estimate

Filing Fees: \$ 0.00

See below and any other contract documents for any additional information about property damage, liability, collision, medical payments, and other insurance coverage, and about warranties, guarantees, and penalties.

this Contract.

I am SELLER. BOLT-N-UP WRECKERS 14644 ST. IN COXSWAIN NY 14322

The Contract is between Seller and Buyer.  
All disclosures have been made by Seller.  
Seller intends to assign this Contract to the Assignee.

Name	Address	Zip Code			
JAMES DEAN STICKY TEAM					
Buyer(s) Name(s)	Address	Zip Code(s)			
there is more than one buyer of each premises, separately and together they all sums due us and make of this agreement in this Contract.					
NOTE: You have agreed to purchase, under the terms of this Contract, the following motor vehicle and its extra equipment, which is called the "Vehicle" in this Contract.					
VIN Year and Make	Model	Body Style	No. Cyl.	Truck Ton Capacity	Vehicle Identification No.
W 2002 CONDOLE 1520	S 14408	5B4LP57G1E3323E02			
I have read and understood the following statement concerning my rights and responsibilities under this Contract.					
I acknowledge that the following amounts of money you have paid to the Seller will be applied to the amount of your debt. You warrant and represent to us that there are no demands, claims, encumbrances or security interests except as shown in the "Contract, Down Payment and Trade-In" section as the amount of the "Down Payoff".					
PROPERTY INSURANCE: You are required to obtain and maintain insurance on the Vehicle, endorsed to yourself as loss payee. BUT YOU CHOOSE THE AGENT OR BROKER OF YOUR CHOICE. IF YOU FINANCE THE PROPERTY INSURANCE PREMIUM, COMPLETE THE FOLLOWING:					
Holder of Documentation: JAMES DEAN					
Physical Damage Coverage: \$ 750.00 Deductible					
Insurance Company: N/A					
Effective Date: Policy Number:					
EMI Name: Address: Telephone Number:					
I guarantee that the required insurance coverage as shown above. Your "Guarantees About Insurance" section was obtained from the agent above. If you don't purchase insurance under this contract, then liability insurance coverage for bodily injury and property damage not included or provided for in this contract.					
HOLDER'S SINGLE INTEREST INSURANCE: If box is checked, we require Vendor's Single Interest Insurance. You may choose the Person through whom Vendor's Single Interest Insurance is to be obtained. This insurance is for the sole protection of the Assignee and your interest not covered. If obtained through us, the cost of such insurance is shown in the "Guarantees About Insurance" in the box labeled "Insurance Company".					
CREDIT INSURANCE IS NOT REQUIRED. Credit Life Insurance, Credit Disability Insurance and Credit Unemployment Insurance is not required to obtain credit and will not be provided unless you sign below and agree to pay the additional cost. Your Insurance certificate or policy will tell you the MAXIMUM amount of insurance available. All insurance purchased will be for the term indicated.					
By signing, you select Single Credit Life Insurance, which costs \$ 172.00 per year. By signing, you select Single Credit Disability Insurance, which costs \$ 288.00 per year.					
Signature of Buyer to be insured for Single Credit Life Insurance					
Signature of Buyer to be insured for Single Credit Disability Insurance					

Amortization of Amount Financed
Upfront Cash Price Balance
\$ 60,952.48
Amounts Paid to Others on Your Behalf
Lesser Tax and Registration
\$ 0.00
To Whom Insurance Company
N/A
To VSI Insurance Company
\$ 35.00
To Property Insurance Company
N/A
To STAR INTERSTATE
\$ 388.00
To
N/A
To
N/A
To
N/A
Other Amounts Financed
To Seller for GAP Coverage
N/A

PLAINTIFF'S  
EXHIBIT

are not required to do so. The term "Buyer" means the person or persons who signs this Contract. The term "Co-Signer" will tell you the maximum amount of insurance available if insurance purchased will be for the term indicated.

I certify you select Single Credit Life Insurance which costs \$

Signature of Buyer to be insured for Single Credit Life Insurance

Buyer:

I signify you do not desire to be covered by Single Credit Life Insurance which costs \$

I signify you do not desire to be covered by Voluntary Unemployment Insurance which costs \$

Signature of both Buyers to be insured for Joint Credit Life Insurance

Buyer:

I signify you do not desire to be covered by Voluntary Unemployment Insurance which costs \$

Signature of Buyer to be insured for Single Credit /Voluntary Unemployment Insurance

Buyer:

EXEMPTION COVERAGE IS NOT PROVIDED. You can obtain coverage for your vehicle through your state's Motor Vehicle Safety and Emissions Program or other insurance company. Coverage may be provided unless it is first and you sign separate CAR Notice requesting CAR coverage which insures you will have coverage if you are unable to pay the amount due at the time of termination of Amount Due.

SIGNER: We intend to assign this Contract and Security Agreement to heirs, successors and assigns provision. If the Assignee assigns the Contract to a subsequent assignee, the term also reverts to such subsequent assignee. After the assignment, all rights and benefits of the seller in this Contract and in the Security Agreement shall belong to and be enforceable by the assignee.

Assignee's name and address:

M&J CREDIT CORPORATION  
Installment Loan Operations  
One Mountain Plaza, P.O. Box 167  
Buffalo, New York 14220

10/14/200

SIGNER: Any person signing the Co-Signer's Agreement below agrees separately and individually to Signer(s) and Buyer(s) to pay all sums due under all agreements in Contract. Co-Signer will not be bound by the terms of this Contract.

OWNER: Any person signing the Owner's Security Agreement below agrees to sell security interest in vehicle and agrees separately and together with all Co-Owner(s) and Buyer(s), enforces all agreements in the original Agreement. All other rights remain except the promise to pay section.

MS: The terms shown in the boxes above are part of this Contract.

NOTE TO BUYER: You agree to pay us the total sale price of the vehicle plus any down payment, the Total Down Payment, and paying us the amount remaining due the credit, less charge (called "Interest" in the contract) and the annual percentage rate shown. You promise to make payments in accordance with the payment schedule agreed to make payment on the date of the same day each month as the next payment due. You further agree to pay us the amount of any late payment.

SECURITY AGREEMENT: To secure the payment of all sums due under performance of all required obligations under this Contract, you give us a security interest in the vehicle, which interest transfers to the holder of the vehicle at any later time, and in any proceeds of the vehicle, clear title to the vehicle, and to the reverse.

ADDITIONAL TERMS AND CONDITIONS: THIS CONTRACT CONTINUES ON THE REVERSE. CONTRACT: You agree to have a copy made of this Contract and to keep it with the Contract and to keep it on file for a period of one year from the date of this Contract.

DISCLOSURE: The owner of this contract is to pay you a portion of the amount you buy back since 7/2001 are entitled to receive a portion of the amount you pay us. Under the law you have the right to pay off the balance the full amount, (a) if up to 15% your may defer up to the nature of the service charge either to prepay without penalty, or (b) for some circumstances obtain a rebate of the credit service charge. According to law you have the privilege of choosing the insurance on the motor vehicle provided for in this Contract from an agent or broker of your own selection.

going below, we agree to sell the Vehicle to you under the terms of this Contract.

You hereby acknowledge receipt of a copy of this Contract.  
RETAINMENT CONTRACT

CR X *[Signature]* (SEAL) *[Signature]* (SEAL) Date

BUYER X *[Signature]* (SEAL) *[Signature]* (SEAL) Date

10/14/0

Date

10/14/0

Date

#### CO-SIGNER NOTICE

If another person is identified above, although you may not personally receive any property or services or money, you may be sued for



BUYER JAMES DEAN STACEY DEAN	SALESPERSON Jim Warden	DATE 10/14/04
STREET 99 LIBERTY STREET	HOME (979) 746-2966	BUSINESS ( )
CITY BLOOMFIELD	STATE NJ	CTY NONE
		ZIP 07003
		STOCK # RV517

I ORDER AND AGREE TO PURCHASE FROM YOU, ON THE TERMS CONTAINED ON BOTH SIDES OF THIS AGREEMENT, THE FOLLOWING VEHICLE  
(READ OTHER SIDE)

2002	<input checked="" type="checkbox"/> NEW <input type="checkbox"/> USED <input type="checkbox"/> DEMONSTRATOR	MAKE CONDOR	MODEL 330	SERIES
TYPE	1959 ERT	TRIM	V.I.N. 5B4LP57G11333350	

**CANCELLATION STATEMENT**

THIS CONTRACT IS CANCELLED BY ME WITHOUT YOUR CONSENT, I UNDERSTAND AND I SHALL BE LIABLE TO YOU FOR LIQUIDATED DAMAGES IN THE MOUNT OF \$500.00, IN ACCORDANCE WITH PARAGRAPH THREE (3) (reverse side) OR ANY ADDITIONAL DAMAGES THAT YOU MAY INCUR THEREFROM.

**USED VEHICLE DISCLOSURE STATEMENT - THE INFORMATION BUYER SEES IN THE F.T.C. WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.**

**PRIOR USE CERTIFICATION** (required by Vehicle and Traffic Law 417-A if principal prior use of the vehicle were as a police vehicle, taxicab, driver education vehicle or rental vehicle). The principal prior use of this vehicle was as: a police vehicle \_\_\_\_\_, a taxicab \_\_\_\_\_, a driver education vehicle \_\_\_\_\_, or a rental vehicle \_\_\_\_\_.

**USED VEHICLE CERTIFICATION** If this motor vehicle is classified as a used motor vehicle, the dealer named above certifies that the entire vehicle is in condition and repair to render, under normal use, satisfactory and adequate service upon the public highways at the time of delivery.

		VEHICLE PRICE	(+) \$60,900.00
		FREIGHT	(+) N/A
KITCHEN SLIDE	0	PREP	(+) N/A
3 BURNER RANGE/OVEN	0	OPTIONS	(+) N/A
OAK REFER FRONT	0		\$1,895.00
COFFEE MAKER	0		
DBL DOOR REFER	0		
PERGO FLOOR	0		
CD STEREO	0		
13" COLOR TV BEDROOM	0		
VIDEO PACKAGE	0		
<b>TOTAL</b>	<b>\$0.00</b>	<b>TOTAL</b>	<b>\$62,803.00</b>

DESCRIPTION OF TRADE-IN				LESS TRADE-IN CREDIT (-)	\$0.00
AR MILEAGE	MAKE	MODEL	COLOR		
ATE NO	EXP. DATE	V.I.N.		DISCOUNT (-)	0.00
ADORN IS CLEAR OF ALL LIENS EXCEPT:	AMT. OWED \$	\$0.00	CASH PRICE	\$	\$ 62,803.00

YOU AGREE TO ASSIST ME IN OBTAINING FINANCING FOR ANY PART OF THE PURCHASE PRICE. THIS ORDER SHALL NOT BE BINDING UPON YOU OR ME UNTIL ALL OF THE CREDIT TERMS ARE PRESENTED TO ME IN ACCORDANCE WITH REGULATION "Z" (RUTH-IN-LENDING) AND ARE ACCEPTED BY ME. IF I DO NOT ACCEPT THE TERMS WHEN PRESENTED, I MAY CANCEL THIS ORDER AND MY DEPOSIT WILL BE REFUNDED.	SALES TAX (+) \$3,854.45
	DOC FEE (+) \$20.00
	REGISTRATION FEE (EST.) (+) \$24.00
	INSPECTION FEE (+) N/A
	TOTAL CASH PRICE (+) \$66,481.45
	REBATE IF APPLICABLE (+) \$0.00
	LESS CASH DEPOSIT SUBMITTED WITH ORDER (+) \$1,000.00
	PLUS BALANCE OWING ON TRADE-IN (+) \$0.00
	AMOUNT FINANCED \$ \$ 62,881.45
	CASH ON DELIVERY \$ \$2,600.00

Dealer application processing fee is not a New York State or Department of Motor Vehicles fee. If a lien is being recorded or the dealer issued number plates, you may avoid this fee by submitting an application for registration and/or certificate of title to any motor vehicle issuing office.

I read the terms on the back of this agreement and have received a completed copy of this agreement.

SIGNATURE *[Signature]* DATE: 10/14/04

SALESPERSON SIGNATURE *[Signature]* DATE: 10/14/04

APPROVED BY: *[Signature]* DATE: *[Signature]*

THE AMOUNT INDICATED ON THIS SALES CONTRACT OR LEASE AGREEMENT FOR REGISTRATION AND TITLE FEES IS AN ESTIMATE. IN SOME INSTANCES, IT MAY EXCEED THE ACTUAL FEES DUE THE COMMISSIONER OF MOTOR VEHICLES. THE DEALER WILL AUTOMATICALLY, AND WITHIN SIXTY DAYS OF SECURING SUCH REGISTRATION AND TITLE, REFUND ANY AMOUNT OVERPAID FOR SUCH FEES.

CHEVROLET


**RECKER**  
**CHEVROLET**
*Mr. Goodwrench*

4301 Clinton Hwy Box 12450

KNOXVILLE, TN 37912

(35) 687-7710

THE LITTLE CHEEPER DEALER

## DISCLAIMER OF WARRANTIES

The factory warranty constitutes all of the warranties with respect to the sale of this item. The seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item.

I ACKNOWLEDGE RECEIPT OF  
THE PARTS AND LABOR  
LISTED BELOW. X

CUSTOMER NO. <b>23888</b>		ADVISOR <b>ALLEM R SURGENOR 184</b>	CARD NO. <b>AS3</b>	INVOICE DATE <b>11/05/01</b>	INVOICE NO. <b>CVCS209532</b>
AMES DEAN 7 LIBERTY ST LOMFIELD, NJ 07003		LABOR RATE <b>62.25</b>	LICENSE NO. <b>2488</b>	COLOR <b>STOCK NO.</b>	
		YEAR / MAKE / MODEL <b>01/WORKHORSE/</b>		DELIVERY DATE	DELIVERY MILES
		VEHICLE ID NO. <b>5F01400P7133552</b>		SELLING DEALER NO.	PRODUCTION DATE
BUSINESS PHONE <b>201-259-9874</b>	BUSINESS PHONE <b>201-259-9874</b>	DATE OWNER NOTIFIED OF REPAIR COMPLETED			MILEAGE OUT

JB# 1 CHARGES

FOR # 1 04CVZ      \*\*\*ENG. PERFORMANCE HOURS: 0.80 TECH(S):299  
NO POWER AND SES LIGHT ON CK AND ADVISE  
CRANSHAFT SENSOR INOP  
TEST AND REPALCE SENSOR AND ROAD TEST VEHICLE

WARRANTY

ARTS-----QTY---FP-NUMBER-----DESCRIPTION-----UNIT PRICE-----  
1      12556427      SENSOR 2.383 C

TOTAL - PARTS

WARRANTY  
0.00

IBLET-----PO#-----VEND INV#-INV.DATE-DESCRIPTION-----  
16436      209532      11/05/01 WRECKER HAUL

TOTAL - SUBLET

WARRANTY  
0.00

JB# 1 TOTALS

JOB# 1 JOURNAL PREFIX CVCS JOB# 1 TOTAL

0.00

JB# 2 CHARGES

FOR # 2 12CVZ      \*\*\*BRAKES      HOURS: 0.60 TECH(S):299  
HYDROBOOST LEAKING CK AND ADVISDE  
LOOSE FITTING AND BRAKE MISADJUSTED  
TIGHTEN FITTING AND ADJUST AUTO APPLY BRAKE

WARRANTY

JB# 2 TOTALS

JOB# 2 JOURNAL PREFIX CVCS JOB# 2 TOTAL

0.00

JB# 3 CHARGES

FOR # 3+18CVZ      \*\*\*ACCESSORIES      HOURS: 0.50 TECH(S):299  
INSTALL DRIVEHAFT FROM WRECKER HAUL  
LEFT OUT FROM WRECKER HAUL  
INSTALL REAR SECTION OF THREE PIECE DRIVEHAFT

WARRANTY

JB# 3 TOTALS

JOB# 3 JOURNAL PREFIX CVCS JOB# 3 TOTAL

0.00

**PLAINTIFF'S  
EXHIBIT**
*B*

CHEVROLET

**REEDER**  
**CHEVROLET***Mr. Goodwrench*4301 Clinton Hwy Box 12450  
KNOXVILLE, TN 37912

(423) 687-7710

THE LITTLE CHEEPEER DEALER

## DISCLAIMER OF WARRANTIES:

The factory warranty constitutes all of the warranties with respect to the sale of this item/items. The seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.

I ACKNOWLEDGE RECEIPT OF  
THE PARTS AND LABOR  
LISTED BELOW. X

CUSTOMER NO. 123888		ADVISOR ALLEN R SURGENOR	184	CARD NO. AS3	INVOICE DATE 11/05/01	INVOICE NO. CVCS209532
JAMES DEAN 19 LIBERTY ST BLOOMFIELD, NJ 07003		LABOR RATE 62.25	LICENSE NO. 2488	MILEAGE 2488	COLOR	STOCK NO.
		YEAR / MAKE / MODEL 01/WORKHORSE/		DELIVERY DATE		DELIVERY MILES
		VENDEE ID. NO. 3 4 P 7 1 3 3 5 2		SELLING DEALER NO.		PRODUCTION DATE
RESIDENCE PHONE	BUSINESS PHONE 201-259-9874	F.T.E. NO.		P.O. NO.	R.O. DATE 11/05/01	MILEAGE OUT
		DATE OWNER NOTIFIED OF REPAIR COMPLETED				

## TOTALS-----

YOU MAY RECEIVE A CUSTOMER SATISFACTION SURVEY FROM GENERAL MOTORS IN THE NEXT FEW WEEKS. IF FOR ANY REASON YOU CANNOT TRADE US "COMPLETELY SATISFIED" PLEASE CONTACT YOUR SERVICE ADVISOR IMMEDIATELY

TOTAL LABOR....	0.00
TOTAL PARTS....	0.00
TOTAL SUBLET...	0.00
TOTAL G.O.B...	0.00
TOTAL MISC CHG.	0.00
TOTAL MISC DISC	0.00
TOTAL TAX.....	0.00
TOTAL INVOICE \$	
0.00	

SERVICE HOURS 7 A.M. TIL 6.00 P.M.  
MONDAY THRU FRIDAY

\*\*\*\*\*  
CASH [ ] CHECK#..... AM EXPRESS [ ]

DISCOVER [ ] VISA [ ] MASTERCARD [ ]

OTHER [ ] CHARGE [ ]

CUSTOMER SIGNATURE

JERSEY BUS SALES  
 2015 RT 206 N  
 BORDENTOWN NJ 08505  
 Phone (609) 298-2987  
 Fax # (609) 291-1287  
 Scheduling (887) 548-2312

THANK YOU FOR DOING BUSINESS  
 WITH JERSEY BUS SALES INC. !!

## INVOICE

Invoice Date: 03/28/2002

Terms:

Invoice # 3599

Page 1

WORKHORSE CUSTOM CHASSIS  
 29508 SOUTHFIELD ROAD  
 SOUTHFIELD MI 48076  
 (248) 443-1515 Ext.

JAMES DEAN

Vehicle Unit #	Make VIN	Model	Date APPROVAL	Order
MH01313	WORKHORSE CC	MOTORHOME		
MPV1330	5B4LP57G113333502			3RVMET0032001313

ababor Performed HWAR	Description CHASSIS-WAR-OTHER	Hours	Total	
		7.80	507.00	
Qty	Part Number	Description	Unit Price	Total
1.00	15713330	SHAFT DRIVE ASSY	223.86	223.86
1.00	25311785	ELECTRONIC THROTTLE ACTU	353.46	353.46

ts:	577.32	Freight:	.00	Tax:	.00	AR	1084.32
or:	507.00	Misc:	.00	Total:	1084.32		
lt:	.00	Supplies:	.00	Change:	.00		

ied

Date



JEAN JAMES  
19 LIBERTY ST  
LOOMFIELD NJ 07003  
HOME: 973-748-2966 BUS: 908-740-7961

## INVOICE

PAGE 1

325 Orient Way P.O. Box 503  
LYNDHURST, NEW JERSEY 07071

SERVICE (201) 939-7790

MEADOWLANDS FREIGHTLINER

P.O. Box 503

LYNDHURST, NEW JERSEY 07071  
(201) 939-7718

SERVICE ADVISOR: 237 BRIAN

COL/CR	YEAR	MAKE/MODEL	VIN	CHASSIS	MILEAGE IN MILE	TAG
HITE	01	WORKHORSE CP31442	5B4LP57G113333502	MBW80D	16978/16978	IDEAN

1 JAN 2001	20:48 09OCT02	84.00	CASH	31OCT2002
------------	---------------	-------	------	-----------

CODE	DESCRIPTION	READY	OPTIONS:	DLR:06007	LIST	NET	TOTAL
------	-------------	-------	----------	-----------	------	-----	-------

CRANK SHAFT NO STARTING	DRIVE SHAFT NO DRIVE SHAFT						
-------------------------	----------------------------	----------------------------	----------------------------	----------------------------	----------------------------	----------------------------	----------------------------

CAUSE: MELTED	REPAIR ENGINE	PONTIAC	(N/C)
---------------	---------------	---------	-------

7WGM94 0.50	(N/C)
-------------	-------

26009706 SWITCPW & WIRE	(N/C)
-------------------------	-------

N6270 WIRING AND/OR CONNECTOR	(N/C)
-------------------------------	-------

1 12102602 CONNECTOR	(N/C)
----------------------	-------

PCN: 1	FREIGHTLINER	(N/C)
--------	--------------	-------

PART#: 26009706	(N/C)
-----------------	-------

QTY: 1	(N/C)
--------	-------

CLAIM TYPE:	(N/C)
-------------	-------

AMOUNT:	(N/C)
---------	-------

RATE: 0.00	TIME: 0.00	AMOUNT: 0.00
------------	------------	--------------

TOP NO STARTING POWER TO HORN OR LIGHTS ON REPAIR ENGINE SWITCH NO OD-PLUG MELTED RPI. SWITCPW & WIRE NEW BEIGE INSTALLED IN GIVE SHAFT	(N/C)
--	-------

DEAR CUSTOMER	VISA
---------------	------

CONCERNING THE ABOVE REPAIRS WE ARE INTERESTED IN YOUR BUSINESS	(N/C)
---	-------

AND AT THE SAME TIME THANK YOU FOR YOUR BUSINESS PLEASE CONTACT OUR PART	(N/C)
--	-------

BUSINESS IF YOU HAVE ANY PROBLEMS PLEASE CALL US	(N/C)
--	-------

2011 939-7705 EXT. 200	(N/C)
------------------------	-------

FREIGHTLINER TRUCK CENTER	(N/C)
---------------------------	-------

We guarantee the labor performed in this repair shop has been competently performed, and that any defect which occurs will be rectified without charge by this repair shop for a period of 90 days or 4,000 miles from the date of the repair, whichever first arises.

The part(s) is sold "as is". The only warranties applying the part(s) are those which may be offered by the manufacturer(s). Selling dealer hereby disclaims all warranties, either express or implied, including any implied warranties of merchantability or fitness for a particular purpose, and neither does he authorize any other person to assume for it any liability in connection with the sale of this part(s) and/or service, or shall not be entitled to recover from the selling dealer any consequential damages, damages to property, damages for loss of time, loss of profits, or income, or any other incidental losses. In addition, expressly excluded is any dealer liability for acts pertaining to safety or performance by way of "strict liability", negligence or otherwise.

## TERMS: STRICTLY CASH UNLESS PRIOR ARRANGEMENTS MADE

I hereby authorize the repair work hereinabove set forth to be done along with the necessary materials and agree that you are not responsible for loss or damage to vehicle or articles left in vehicle in case of fire, theft or any other cause beyond our control or for any delays caused by unavailability of parts or delays in parts shipments by the supplier or transporter. I hereby grant you under your employees permission to operate the vehicle, herein described on streets, highways, or elsewhere for the purpose of testing and/or inspection. An express mechanic's lien is hereby acknowledged on above vehicle to secure the amount of repairs thereto.

X

CUSTOMER SIGNATURE

## DESCRIPTION

TOTAL AMOUNT

LABOR AMOUNT

PARTS AMOUNT

GAS, OIL, LUBE, ANTIFREEZE

SUBLET AMOUNT

SHOP SUPPLIES

TOTAL CHARGES

LESS INSURANCE

SALES TAX

PLEASE PAY THIS AMOUNT

0.00

CUSTOMER COPY

**KIMMEL & SILVERMAN**  
Vivian B. Peikin, Esquire  
89 Haddon Avenue North  
Haddonfield, NJ 08033  
(856) 429-8334

Attorney for Plaintiff

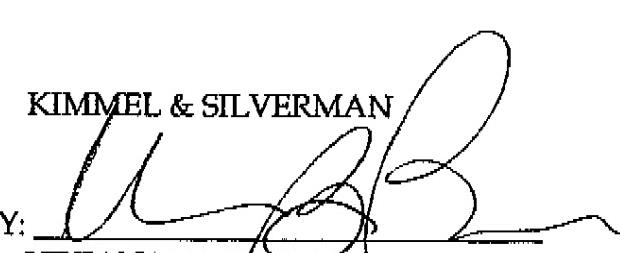
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JAMES AND STACY DEAN, : SUPERIOR COURT OF NEW JERSEY  
Plaintiffs, : ESSEX COUNTY, LAW DIVISION  
v. : DOCKET NO.: L-7354-03  
WORKHORSE CUSTOM CHASSIS : NOTICE OF MOTION FOR LEAVE  
Defendant : TO AMEND PLAINTIFF'S COMPLAINT

---

PLEASE TAKE NOTICE that the undersigned will apply to the above-named Court, at the Essex County Courthouse, on January 23, 2004, or as soon thereafter as counsel may be heard for an Order granting Leave to Amend Plaintiff's Complaint.

PLEASE TAKE FURTHER NOTICE that pursuant to R.1:6-2, the undersigned waives oral argument unless responsive papers are timely filed and the Court is inclined to deny the request.

KIMMEL & SILVERMAN  
BY:   
VIVIAN B. PEIKIN, Esquire  
Attorney for Plaintiff

**KIMMEL & SILVERMAN**  
**Vivian B. Peikin, Esquire**  
**89 Haddon Avenue North**  
**Haddonfield, NJ 08033**  
**(856) 429-8334**

**Attorney for Plaintiff**

---

JAMES AND STACY DEAN, : SUPERIOR COURT OF NEW JERSEY  
Plaintiffs, : ESSEX COUNTY, LAW DIVISION  
v. :  
DOCKET NO.: L-7354-03  
:  
WORKHORSE CUSTOM CHASSIS :  
Defendant : ORDER

---

THIS MATTER having been brought before the Court by Vivian B. Peikin, Esquire, attorney for Plaintiffs, in the above-captioned matter, for an Order granting Leave to Amend Plaintiffs' Amended Complaint, and the Court having considered the response of the Attorney for Defendants, and oral argument, if any:

IT IS ON THIS day of , 2003, hereby ORDERED and DECREED that Plaintiffs' Motion is GRANTED and Plaintiffs may amend the Complaint.

---

J.S.C.

**KIMMEL & SILVERMAN**  
Vivian B. Peikin, Esquire  
89 Haddon Avenue North  
Haddonfield, NJ 08033  
(856) 429-8334

**Attorney for Plaintiff**

---

JAMES AND STACY DEAN,  
Plaintiff, : SUPERIOR COURT OF NEW JERSEY  
v. : ESSEX COUNTY, LAW DIVISION  
WORKHORSE CUSTOM CHASSIS,  
Defendant. : DOCKET NO.: L-7354-02  
: AFFIDAVIT OF COUNSEL IN SUPPORT  
: OF PLAINTIFF'S NOTICE OF  
: CROSS-MOTION FOR LEAVE TO  
: AMEND PLAINTIFF'S COMPLAINT

---

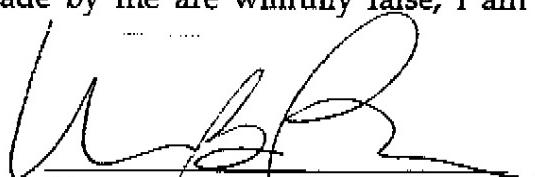
I, Vivian B. Peikin, being of full age and duly sworn to law, hereby deposes and says:

1. I am an attorney in the State of New Jersey and an associate in the firm of Kimmel & Silverman. I am fully familiar with the facts of this case.
2. The within lawsuit involves violations of the New Jersey Motor Vehicle Warranty Act, the Magnuson Moss Warranty Improvement Act, the Uniform Commercial Code and the New Jersey Consumer Fraud Act, all stemming from a 2002 Condor Motorhome by R-Vision, manufactured and warranted by Defendant, Workhorse Custom Chassis.
3. The vehicle was sold by Boat-N-RV Warehouse, an authorized sales and service dealership located in West Coxsackie, New York.

4. The Amended Complaint originally did not include Defendant, Workhorse Custom Chassis, in Count IV alleging violations of the New Jersey Motor Vehicle Warranty Act count.
5. After further discovery, it is believed that Defendant, Workhorse Custom Chassis, violated the New Jersey Motor Vehicle Warranty Act. Additionally, discovery is still outstanding from Defendant, Workhorse Custom Chassis, therefore Defendant, Workhorse, will not suffer undue prejudice as a result of the required amendment. Attached hereto and marked as Exhibit "A" is a copy of Plaintiffs' Amended Complaint.
6. Plaintiffs, therefore, request that they be permitted leave to amend their Amended Complaint to add Defendant, Workhorse Custom Chassis, into Count IV of the Amended Complaint, alleging violations of the New Jersey Motor Vehicle Warranty Act.

This Affidavit is made in support of the within Motion.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Vivian B. Peikin  
An Attorney-At-Law of the  
State of New Jersey

Dated: January 5, 2004

**KIMMEL & SILVERMAN**  
Vivian B. Peikin, Esquire  
89 Haddon Avenue North  
Haddonfield, NJ 08033  
(856) 429-8334

**Attorney for Plaintiff**

---

JAMES AND STACY DEAN, : SUPERIOR COURT OF NEW JERSEY  
Plaintiffs, : ESSEX COUNTY, LAW DIVISION  
v. :  
DOCKET NO.: L-7354-03  
:  
WORKHORSE CUSTOM CHASSIS :  
Defendant : CERTIFICATE OF SERVICE

---

I, VIVIAN B. PEIKIN, ESQUIRE, hereby certify that a true and correct copy of the foregoing PLAINTIFFS' MOTION FOR LEAVE TO AMEND PLAINTIFFS' COMPLAINT was served on the following parties via First Class U.S. Mail on the date indicated below:

Workhorse Custom Chassis  
600 Central Ave.  
Suite 220  
Highland Park, IL 07095

KIMMEL & SILVERMAN



VIVIAN B. PEIKIN

Date: January 5, 2004

Cc: John Amari

**KIMMEL & SILVERMAN**  
Vivian B. Peikin, Esquire  
89 Haddon Avenue North  
Haddonfield, NJ 08033  
(856) 429-8334

Attorney for Plaintiff

---

JAMES AND STACY DEAN, : SUPERIOR COURT OF NEW JERSEY  
Plaintiff, : ESSEX COUNTY, LAW DIVISION  
v. : DOCKET NO.: L-7354-03  
WORKHORSE CUSTOM CHASSIS, : BRIEF IN SUPPORT OF PLAINTIFF'S  
Defendant. : MOTION FOR LEAVE TO FILE  
: AMENDED COMPLAINT

---

I. **FACTS**

Plaintiff filed a Complaint against Defendant, Workhorse Custom Chassis, on or about September 5, 2003, asserting the Federal Magnuson Moss Warranty Act (Count I), The Uniform Commercial Code (II) and violations of the New Jersey Consumer Fraud Act (Count III) in connection with Plaintiffs' purchase and subsequent servicing of a 2002 Condor Motor home by R-Vision, manufactured and warranted by Defendant, Workhorse Custom Chassis. The vehicle was sold and serviced by Boat-N-RV Warehouse of West Coxsackie, New York.

After further discovery, it is believed that Boat-N-RV Warehouse and R-Vision acted negligently and made negligent repairs to the vehicle. Furthermore, it is believed that the actions of Boat-N-RV Warehouse and R-Vision constitute violations of the New Jersey Motor Vehicle Warranty Act, the Magnuson-Moss

Warranty Improvement Act, the New Jersey Consumer Fraud Act, as well as a breach of contract. Therefore, on December 19, 2003, Plaintiffs filed an Amended Complaint pursuant to Judge Lombardi's Order of December 5, 2003, granting Plaintiffs' Motion to do the same.

After further discovery, it is believed that Defendant, Workhorse Custom Chassis, also violated the New Jersey Motor Vehicle Warranty Act. Discovery is still outstanding from Defendant Workhorse Custom Chassis, thus Defendant, Workhorse Custom Chassis, will not suffer undue prejudice as a result of the required amendment.

Therefore, Plaintiffs respectfully request leave to amend their Complaint to add as Defendant, Workhorse Custom Chassis, to Count IV of the Amended Complaint alleging violations of the New Jersey Motor Vehicle Warranty Act.

## II. LEGAL ARGUMENT

New Jersey Rule of Civil Procedure 4:9 provides:

### **Rule 4:9-1. Amendments**

A party may amend any pleading as a matter of course at any time before a responsive pleading is served, or if the pleading is one to which no responsive pleading is to be served, and the action has not been placed upon the trial calendar, at any time within 20 days after it is served. Thereafter a party may amend a pleading only by written consent of the adverse party or by leave of court, which shall be freely given in the interest of justice.

Thus, while leave to amend is within the discretion of the Court, the Rule requires that leave to amend be "freely given" when justice so requires. In

Forman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed. 2d 222 (1962), the United States Supreme Court held it was error for the an appellate court to affirm the trial court's denial of the plaintiff's Motion to Vacate Judgment of Dismissal for Failure to State a Claim in order to allow the complaint be amended, since it appeared that the amendment would have done no more than state an alternative theory for recovery.

In the instant case, Plaintiffs seek to amend their Complaint in order to add Defendant, Workhorse Custom Chassis, to Count IV of the Amended Complaint alleging violations of the New Jersey Motor Vehicle Warranty Act. No undue prejudice will result from the allowance of such an amendment. However, great prejudice will result to Plaintiffs if they are not permitted to amend the Complaint, as Plaintiffs will, in effect, be denied possible rights of recovery.

### III. CONCLUSION

Plaintiffs' Motion for Leave to File an Amended Complaint should be granted in accordance with New Jersey Rule of Civil Procedure 4:9-1, as such Motions should be freely granted, it has not been brought in bad faith, there has been no undue delay, and Defendant will not suffer undue prejudice as a result of the requested amendment.

For the reasons set forth above, Plaintiffs respectfully requests this Honorable Court enter the proposed Order, granting Plaintiff's Motion for Leave

to File an Amended Complaint to add Defendant, Workhorse Custom Chassis, to  
Count IV of the Amended Complaint.

KAMMEL & SILVERMAN  
BY:   
Vivian B. Peikin  
Attorney for Plaintiffs

KIMMEL & SILVERMAN

By: Jacqueline C. Herritt, Esquire  
Vivian B. Peikin, Esquire  
89 Haddon Avenue North  
Haddonfield, New Jersey 08033  
(609) 429-8334

Attorneys for Plaintiff

---

JAMES AND STACEY DEAN : SUPERIOR COURT OF NEW JERSEY  
99 Liberty Street : ESSEX COUNTY - LAW DIVISION  
Bloomfield, NJ 07003 :

v. : CIVIL ACTION

WORKHORSE CUSTOM CHASSIS :  
600 Central Avenue, Suite 220 :  
Highland Park, IL 60035 :

and :

R-VISION :  
2666 S. Country Club Road :  
Warsaw, IN 46580 :

and :

BOAT-N-RV WAREHOUSE :  
12834 Rte. 9W :  
West Coxsackie, NY :

AMENDED COMPLAINT

1. Plaintiffs, James and Stacey Dean, are adult individual citizens and legal residents of the State of New Jersey, residing at 99 Liberty Street, Bloomfield, New Jersey 07003.

2. Defendant, Workhorse Custom Chassis, is a business corporation qualified to do business in the State of New Jersey, with its legal residence and principal place of business located at 600 Central Avenue, Suite 220, Highland Park, Illinois 60035, and can be served at same.

3. Defendant, R-Vision, is a business corporation qualified to do business in the State of New Jersey, with its legal residence and principal place of business located at 2666 S. Country Club Road, Warsaw, IN 46580, and can be served at same.

4. Defendant, Boat-N-RV Warehouse, is a business corporation qualified to do business in the State of New Jersey, with its legal residence and principal place of business located at 12834 Rte. 9W, West Coxsackie, NY 12192, and can be served at same.

#### BACKGROUND

5. On or about October 14, 2001, Plaintiffs purchased a 2002 Condor Motorhome by R-Vision, manufactured and warranted by Defendant, Workhorse Custom Chassis bearing the Vehicle Identification Number 5B4LP57G113333502. The vehicle was purchased in the State of New York and is registered in the State of New Jersey.

6. The price of the vehicle, including registration charges, document fees, sales tax, finance and bank charges but, excluding other collateral charges not specified, totaled more than \$119,112.00. A true and correct copy of the Sale Contract is attached hereto, made a part hereof and marked Exhibit "A".

7. Plaintiff avers that as a result of the ineffective repair attempts made by Defendant through its authorized dealer(s), the vehicle cannot be utilized for the purposes

intended by Plaintiff at the time of acquisition and as such, the vehicle is worthless.

8. In consideration for the purchase of the above vehicle, Defendant issued to Plaintiff several written warranties, including the balance of a three (3) year or thirty-six-thousand (36,000) mile bumper-to-bumper warranty, and a 72 month/75,000 mile extended warranty, as well as other standard warranties, as set forth in the warranty booklet. A true and correct copy of the Extended Service Plan Contract is not in Plaintiffs' possession, however, it is believed that Defendant may obtain from it's authorized dealer.

9. On or about October 14, 2001, Plaintiff took possession of the above-mentioned vehicle and experienced nonconformities which substantially impair the use, value and/or safety of the vehicle.

10. The nonconformities violate the express written warranties issued to Plaintiff by Defendant.

11. Plaintiff avers the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remains uncorrected.

12. In addition, the above vehicle has or will be out of service by reason of the nonconformities complained of for a cumulative total of twenty (20) days or more.

13. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the manufacturer on numerous occasions. After a reasonable number of attempts, the manufacturer was unable to repair the nonconformities.

14. During the warranty period, Plaintiff complained about defects and/or non-conformities to the following vehicle components on at least three (3) occasions: transmission, acceleration, engine management system, windshield wipers and powertrain. True and correct copies of repair invoices are attached hereto, made a part hereof and marked Exhibit "B."

15. The vehicle continues to exhibit defects and nonconformities which substantially impair its use, value and/or safety.

16. Plaintiff has been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton and negligent failure to comply with the provisions of its warranty.

17. Plaintiff has provided Defendant with a final repair opportunity prior to filing the within Complaint.

18. Plaintiff seeks relief for losses due to the nonconformities and defects in the above-mentioned vehicle in addition to reasonable attorney fees and all court costs.

**COUNT I AGAINST ALL DEFENDANTS**  
**MAGNUSON-MOSS FEDERAL TRADE COMMISSION IMPROVEMENT ACT**

17. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

18. Plaintiff is a "Consumer" as defined by 15 U.S.C. §2301(3).

19. Defendant is a "Warrantor" as defined by 15 U.S.C. §2301(5).

20. The purpose for which this product is normally used is personal, family and household use.

21. By the terms of the express written warranties referred to in this Complaint, Defendant agreed to perform effective warranty repairs at no charge for parts and/or labor.

22. Defendant has made attempts on several occasions to comply with the terms of its express warranties; however, such repair attempts have been ineffective.

23. As a direct and proximate result of Defendant's failure to comply with the express written warranties, Plaintiff has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Plaintiff is entitled to bring suit for such damages and other legal and equitable relief.

24. Section 15 U.S.C. § 2310(d)(1) provides:  
If a consumer finally prevails on an action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the amount of aggregate amount of costs and expenses (including attorney fees based upon actual time expended), determined by the court to have been reasonably incurred by the Plaintiff for, or in connection with the commencement and prosecution of such action, unless the court, in its discretion shall determine that such an award of attorney's fees would be inappropriate.

25. Plaintiff avers Defendant's Dispute Resolution Program is not in compliance with 16 CFR 703 by the FTC for the period of time this claim was submitted.

26. Plaintiff avers that upon successfully prevailing upon the Magnuson-Moss claim herein, all attorney fees are recoverable and are demanded against Defendant.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the contract price of the subject vehicle, plus all collateral charges and attorney fees.

**COUNT II AGAINST ALL DEFENDANTS**  
**UNIFORM COMMERCIAL CODE**

27. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

28. The defects and nonconformities existing within the vehicle constitute a breach of contractual and statutory obligations of Defendant, including but not limited to the following:

- a. Express Warranty;
- b. Implied Warranty Of Merchantability; and
- c. Implied Warranty Of Fitness For A Particular Purpose.

29. At the time of obtaining possession of the vehicle and at all times subsequent thereto, Plaintiff has justifiably relied upon Defendant's express warranties and implied warranties of fitness for a particular purpose and implied warranties of merchantability.

30. At the time of obtaining possession of the vehicle and at all times subsequent thereto, Defendant was aware Plaintiff was relying upon Defendant's express and implied warranties, obligations, and representations with regard to the subject vehicle.

31. Plaintiff has incurred damages as a direct and proximate result of the breach and failure of Defendant to honor its express and implied warranties.

32. Such damages include, but are not limited to, the contract price of the vehicle plus all collateral charges, including attorney fees and costs, as well as other expenses, the full extent of which are not yet known.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant, in an amount equal to the contract price of the subject vehicle, plus all collateral charges and attorney fees.

**COUNT III AGAINST ALL DEFENDANTS**  
**NEW JERSEY CONSUMER FRAUD ACT**

33. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

34. Plaintiff is a "Person" as defined by N.J.S.A. 56:8-1(d).

35. Defendant is a "Person" as defined by N.J.S.A. 56:8-1(d).

36. Defendant's actions surrounding the sale and servicing of the subject vehicle were unconscionable. Defendant's agents also acted with a reckless and callous disregard for Plaintiff's rights in negotiating and handling Plaintiff's warranty claims.

37. Defendant's actions surrounding the sale and servicing of said vehicle constitute a unconscionable commercial practice, deception, fraud, false pretense, false promise, and/or misrepresentation. Defendant and its agents acted affirmatively in such a manner as to be an unlawful commercial practice.

38. Defendant acted knowingly with the intent to cause plaintiff's reliance thereupon.

39. Defendant knowingly concealed, suppressed, or omitted facts material to the transactions at issue, in that Defendant was aware the defect(s)/condition(s) could not be repaired, and that the ineffectual repairs were performed by incompetent or unqualified individuals. Defendant's failure to verify the defect(s) or condition(s) constitutes a refusal to perform the repairs under its statutory or contractual obligations.

40. Plaintiff believes, and therefore, avers that the defect(s) or condition(s) outlined previously is/are an inherent design defect and that as such the Defendant must certify the existence of this defect or condition to the Division of Consumer Affairs. Defendant has failed to file this certification and this failure is a violation of the New Jersey Consumer Fraud Act N.J.S.A. 56:8-1 et seq.

41. Defendant's failure to supply an itemized legible statement of repair is an unlawful practice pursuant to the New Jersey Consumer Fraud Act N.J.S.A. 56:8-2.

42. The Act prohibits the aforementioned action of Defendant in the sale and attempted repair of the subject vehicle.

43. Plaintiff believes, and therefore, avers the reckless, wanton and willful failure of Defendant to comply with the terms of the written warranties constitutes an unfair method of competition.

44. As a result of Defendant's unlawful conduct, Plaintiff has and will continue to suffer ascertainable financial loss proximately caused by the Defendant's conduct. Said losses are outlined as follows:

- a. Plaintiff is entitled to a full refund N.J.S.A. 56:8-2.11-12;
- b. Plaintiff's vehicle given the defect/condition is worthless;
- c. Plaintiff lost time from work and other money as a result of having to take the vehicle in for the repeated repair attempts;
- d. Plaintiff has been relegated to finding alternative means of transportation while the vehicle was in for repairs and while the vehicle has been in its present condition. As a result, Plaintiff has incurred additional transportation costs; and
- e. Plaintiff has expended sums to maintain, store, insure, register,

and other expenses for transportation.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant for compensatory damages, treble damages, attorney fees, costs of suit, and any further relief as the Court may deem just and proper.

**COUNT IV AGAINST ALL DEFENDANTS**  
**NJ MOTOR VEHICLE WARRANTY ACT**

45. Plaintiff hereby incorporates all facts and allegations set forth in this Complaint by reference as if fully set forth at length herein.

46. Plaintiff is a "Consumer" as defined by N.J.S.A. 56:12-30.

47. Defendant is a "Manufacturer" as defined by N.J.S.A. 56:12-30.

48. Boat-N-RV Warehouse, is and/or was at the time of sale a "Dealer or Motor Vehicle Dealer" in the business of buying, selling, and/or exchanging vehicles as defined by N.J.S.A. 56:12-30.

49. On or about October 14, 2001, Plaintiff took possession of the above mentioned vehicle and experienced nonconformities as defined by N.J.S.A. 56:12-29 et seq., which substantially impair the use, value and/or safety of the vehicle.

50. Defendant through its authorized dealer failed to provide written notification that the vehicle was covered by the New Jersey Motor Vehicle Warranty Act as provided in N.J.S.A.

56:12-34(c). Plaintiff believes and therefore avers said failure is a per se violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., as well as a violation of the New Jersey Motor Vehicle Warranty Act.

51. The nonconformities described violate the express written warranties issued to Plaintiff by Defendant.

52. Section 56:12-32 of the New Jersey Motor Vehicle Warranty Act provides:

- a. If, during the period specified in section 3 of this act, the manufacturer or its dealer is unable to repair or correct a nonconformity within a reasonable time, the manufacturer shall accept return of the motor vehicle from the consumer. The manufacturer shall provide the consumer with a full refund of the purchase price of the original motor vehicle including any stated credit or allowance for the consumer's used motor vehicle, the cost of any options or other modifications arranged, installed, or made by the manufacturer or its dealer within 30 days after the date of original delivery, and any other charges or fees including, but not limited to, sales tax, license and registration fees, finance charges, reimbursement for towing and reimbursement for actual expenses incurred by the consumer for the rental of a motor vehicle equivalent to the consumer's motor vehicle and limited to the period during which the consumer's motor vehicle was out of service due to a nonconformity, less a reasonable allowance for vehicle use.

53. Section 56:12-33 of the New Jersey Motor Vehicle Warranty Act provides a presumption of a reasonable number of repair attempts:

- a. It is presumed that a manufacturer or its dealer is unable to repair or correct a nonconformity within a reasonable time if, within the first 18,000 miles of operation or during the period of two years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date:
  - (1) Substantially the same nonconformity has been subject to repair three or more times by the manufacturer or its dealer and the nonconformity continues to exist; or
  - (2) The motor vehicle is out of service by reason of repair for one or more nonconformities for a cumulative total of 20 or more calendar days since the original delivery of the motor vehicle and a nonconformity continues to exist.
- b. The presumption contained in sub-section a. of this section shall apply against a manufacturer only if the manufacturer has received

written notification, by or on behalf of the consumer, by certified mail return receipt requested, of a potential claim pursuant to the provisions of this act and has had one opportunity to repair or correct the defect or condition within 10 calendar days following receipt of the notification. Notification by the consumer shall take place any time after the motor vehicle has had substantially the same nonconformity subject to repair two or more times or has been out of service by reason of repair for a cumulative total of 20 or more calendar days.

54. Plaintiff has satisfied the above definition as the vehicle has been subject to repair more than three (3) times for the same nonconformity, and the nonconformity remained uncorrected.

55. In addition, the above vehicle has or will be out of service by reason of the nonconformities complained of for a cumulative total of twenty (20) or more calendar days.

56. Plaintiff has delivered the nonconforming vehicle to an authorized service and repair facility of the Defendant on numerous occasions as outlined below.

57. After a reasonable number of attempts, Defendant was unable to repair the nonconformities.

58. During the warranty period, Plaintiff complained about defects and/or non-conformities to the following vehicle components on at least three (3) occasions: transmission, acceleration, engine management system, windshield wipers and powertrain. True and correct copies of repair invoices are attached hereto, made a part hereof and marked Exhibit "B."

59. The vehicle continues to exhibit defects and nonconformities which substantially impair its use, value and/or safety.

60. Plaintiff has been and will continue to be financially damaged due to Defendant's intentional, reckless, wanton, and negligent failure to comply with the provisions of N.J.S.A. 56:12-29 et seq.

61. Plaintiff has provided Defendant with a final repair opportunity prior to filing the within Complaint.

62. Pursuant to N.J.S.A. 56:12-29 et seq., Plaintiff seeks relief for losses due to the nonconformities and defects in the above-mentioned vehicle in addition to reasonable attorney fees and all court costs.

WHEREFORE, Plaintiff respectfully demands judgment against Defendant in an amount equal to the price of the subject vehicle, plus all collateral charges, attorneys' fees, and court costs.

KIMMEL & SILVERMAN

By:

  
Jacqueline C. Hermitt, Esquire  
Vivian B. Peikin, Esquire  
Attorneys for Plaintiff  
89 Haddon Avenue North  
(856) 429-8334

JURY-DEMAND

Plaintiff hereby demands a trial by jury as to all issues.

KIMMEL & SILVERMAN

By:

Jacqueline C. Herritt, Esquire  
Vivian B. Peikin, Esquire  
Attorneys for Plaintiff

CERTIFICATION PURSUANT TO R.4:15-1

Upon knowledge and belief I hereby certify that there are no other actions or arbitrations related to this suit pending or presently contemplated.

KIMMEL & SILVERMAN

By:

Jacqueline C. Herritt, Esquire  
Vivian B. Peikin, Esquire  
Attorneys for Plaintiff

CERTIFICATION OF NOTICE

Pursuant to N.J.S.A. 56:8-20 Plaintiff is mailing a copy of this Complaint to the Office of the Attorney General, Richard J. Hughes Justice Complex, 25 West Market Street in the City of Trenton, County of Mercer, in the State of New Jersey on , 2003.

KIMMEL & SILVERMAN

By:

JACQUELINE C. HERRITT, ESQUIRE  
VIVIAN B. PEIKIN, ESQUIRE  
Attorneys for Plaintiff